

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:08-CR-111
)	(PHILLIPS/SHIRLEY)
JIMMY JEROME SMITH,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. The parties appeared before the undersigned on October 15, 2008, for a scheduled pretrial conference and hearing on the defendant's Motion for a Bill of Particulars and Memorandum in Support [Doc. 14] filed on September 22, 2008. Assistant United States Attorney Tracee Plowell appeared on behalf of the government. Attorney Jonathan Moffatt represented the defendant, who was also present.

At the hearing, defense counsel stated that the government's response [Doc. 16] provided the clarification he was seeking in a bill of particulars. He agreed that the voluntary disclosure in the government's response rendered his motion moot. Defense counsel also informed the Court that the communication between the defendant and himself had declined recently and that they disagreed over the direction the case should take. In light of these problems, he moved to continue the October 20, 2008 trial date in order to allow time to resolve the issue. The government

had no objection to the requested continuance. The Court addressed the defendant who stated that he would rather continue his trial and have time to look into getting another lawyer to represent him than proceed to trial the following week with Attorney Moffatt.

The Court finds that the ends of justice served by granting a continuance outweigh the interest of the defendant and the public in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). Noting that the defendant does not appear to be working with his present attorney, the Court finds that the failure to grant a continuance could deprive the defendant of time to prepare for trial with the benefit of effective representation. See 18 U.S.C. § 3161(h)(8)(B)(iv). The defendant needs time to raise the issue of a breakdown in communication and/or trust with counsel. See 18 U.S.C. § 3161(h)(1)(F). Once the issue is properly before the Court, the undersigned will need time to hear and rule upon the matter. See 18 U.S.C. § 3161(h)(1)(J). If the Court appoints a new attorney for the defendant, that individual will need time to review and research the case and to prepare for trial. The Court finds that all of this could not take place before the October 20, 2008 trial date or in less than four months. Thus, without a continuance, counsel would not have the reasonable time necessary to prepare for trial despite his use of due diligence. See 18 U.S.C. § 3161(h)(8)(B)(iv).

Accordingly, the Court **GRANTS** a continuance of the trial and resets it to **February 24, 2009**. The Court also finds that all the time between the October 15, 2008 hearing and the new trial date of February 24, 2009, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(1)(F), (J), and (h)(8)(A)-(B). With regard to further scheduling, the Court set a motion hearing for October 21, 2008, at 2:00 p.m. in order to address the defendant's issues with his attorney.

Accordingly, it is ordered:

(1) The defendant's Motion for a Bill of Particulars and Memorandum in Support [**Doc. 14**] is **DENIED as moot**;

(2) The defendant's oral motion to continue the trial is **GRANTED**;

(3) The trial of this matter is reset to commence on **February 24, 2009, at 9:00 a.m.**, before the Honorable Thomas W. Phillips, United States District Judge;

(4) All time between the **October 15, 2008** hearing and the new trial date of **February 24, 2009**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein; and

(5) The parties are to appear before the undersigned for a motion hearing on **October 21, 2008, at 2:00 p.m.**

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge